

KYLE HANLON, Chair  
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NATHANIEL W. KARNS, A.I.C.P.  
Executive Director

**MINUTES OF THE REGIONAL ISSUES COMMITTEE-Approved**

August 23, 2017

*At Berkshire Regional Planning Commission Office  
1 Fenn Street, Ste. 201, Pittsfield, MA 01201*

**I. Call to Order**

The meeting was called to order at 4:02 p.m. by Chair Mullin.

The following Committee Members were present:

James Mullen, New Marlborough, Chair  
C.J. Hoss, Pittsfield, Vice Chair  
Bob Bott, Mt. Washington  
Andrew Groff, Williamstown  
Kyle Hanlon, North Adams  
Sarah Hudson, Tyringham  
Sheila Irvin, Pittsfield  
Gwen Miller, Lenox  
Marie Raftery, Stockbridge  
Chris Rembold, Great Barrington  
Eleanor Tillinghast, Mt. Washington

Staff Present:

Nat Karns, Executive Director

**II. Approval of Minutes of July 19, 2017 Meeting**

A motion was made by Sarah Hudson, seconded by Marie Raftery, to approve the minutes. There was one correction to those in attendance. The corrected minutes were approved with three abstentions.

**III. Short Term Housing Rentals**

The Committee quickly looked through the information that had been provide for the meeting. One item as guidance from a few years ago from DPH to the local Boards of Health. That then resulted some discussions with local building commissioners who had a different viewpoint and all discussions stopped. We do not know is the 2014 DPH guidance still reflects current thinking.

Nat reported that he had been informed that the legislative committee was not planning on dealing with this until after January 1. This would provide an opportunity to us to develop comments to the legislature.

Gwen reported that the Lenox Planning Board had formed a subcommittee on this topic which includes a select board and finance committee member. Williamstown, Great Barrington, and Pittsfield do not yet have policies on this topic. Lenox has a regulation which has been on the books for a couple of decades. That allows people to rent rooms to 3 or more people between Memorial Day and Columbus Day. It requires they obtain a certificate of occupancy and to meet certain standards. For B&Bs which also provide breakfast there are requirements for a public health certification since food is

being prepared and served. Lenox is not currently covering the rental of an entire house for less than 30 days; anything 30 days or longer is covered by leases and is not considered a short-term rental.

The building code and what use category is appropriate to regulate is a substantial issue. The new 9<sup>th</sup> edition has not yet been adopted in Massachusetts and may help to clarify some longstanding questions. We do not know if adoption in Massachusetts has to go through a regulatory adoption process. Great Barrington and Williamstown public officials believe that the new regulations will treat those short-term rentals with a resident host differently. It is their understanding that if a home is owner occupied and they rent five or less rooms, they will be treated as an R-3 use which allows some latitude. If short-term lodging does not have an on-site owner then it will be treated as a commercial use and would have to meet R-1 standards which are harder to meet. For rentals over 30 days, they are treated as a lease not a short-term rental. Some communities have inspections of all long-term rental housing upon change in tenant. The new building code is not expected to change long-term rentals.

Due to the conflicting interpretations of which use category short term rentals fall under in the existing code, Williamstown is reluctant to enforce it at all.

In Lenox, the planning board wants to be prepared if legislation passes. But homes are being purchased now to be purely short-term rentals and this is having a negative impact on meeting community longer term housing needs in a tight market. It is also unfair to traditional lodging facilities to pay lodging taxes and be subject to inspections that other short-term renters do not have to be subjected to.

People do move out of their homes to rent them out for the Tanglewood season and this is happening in many towns. This creates friction with the traditional lodging industry. Owners in many communities live elsewhere and rent their homes here out when they are not present here. Regulating this is not necessarily going to be the same in every community. In both Lenox and Great Barrington there are houses being purchased for the exclusive purpose of renting them in the short-term rental market but is much more financially advantageous for the property owner. This has a negative impact on affordability and availability of rental units which are in too short a supply as is. We have anecdotal information but do not really know to what degree this is occurring.

There are tax benefits in treating a property as rental. The IRS does not require rental income to be reported if one is renting for 15 days or less per year. If you treat it as an income generating property, you can pro-rate costs of owning and maintaining based on how many days you use it for personal use versus the number of days it was producing income [it is possible that it is pro-rated on how many days the owner used it versus the number of days it was available for rental use.] One question is whether to suggest the 15 day IRS cut-off to the legislature.

There is some feeling that having or encouraging the short-term rental market encourages younger people to move to the Berkshires. Younger visitors can rent less expensive accommodations and this may attract them to visit. It also may provide an income which helps them in becoming property owners and residents here.

However, it does create an inequity for inn keepers and B&B operators who have to collect and reimburse lodging taxes. They are subject to inspections as well. Both the taxation and the inspection requirements create a burden for them. It appears that smaller lodging establishments are overly burdened by the existing building code and its requirements.

At this point there is a significant building code problem. There needs to be a balance between short-term rentals and the permanent housing market. Currently it appears small innkeepers are being over-regulated and we are under-regulating the short-term rental market. Owners are just listing their homes on the short-term rental sites and are not regulated. Lenox, at least, wants to be able to collect lodging tax from the short-term rentals.

The proposed legislation seems to hit on all the issues. It allows localities to limit and regulate non-resident investment properties. It requires that if a locality chooses to collect lodging taxes, it must put half of the amount into affordable housing. Localities can charge for necessary inspections. There are concerns that if short-term rentals are put into the R-3 use group in the building code, they will simply go underground and try to evade any inspections and any taxes. Then if Building Commissioner receives a complaint about a property being used for short-term rentals which isn't registered, there will be a lengthy and expensive court battle to deal with it.

The legislation only covers the on-line rental industry such as Airbnb, HomeAway, and VRBO. A lot of short-term rentals fall outside of these sites. The various arts organizations in the region do a lot of rentals for performers and crews and make these arrangements without going through the on-line sites. It is easier to collect taxes and enforce if are just dealing with the on-line sites.

What issues do short-term rentals create at the local level? We don't know that they require more or less local services. Issues that were raised included the amount of partying that may go on; holding of special events such as weddings at the rental; impact on neighborhood character. At some point, if a property is being constantly used for special events it is a commercial use and not simply a short-term rental. One concern is college-aged kids renting and then trashing the place and annoying the neighbors.

Airbnb has indicated it isn't concerned with collecting and reimbursing the lodging tax. They get their price and then add the tax on top of that, just like the hotel industry. The renting agencies have to pay the tax but collection from homeowners is more difficult and they would have to collect and reimburse the taxes.

There was considerable discussion about the danger of over-regulating this use. One line of thought is to let the practice evolve and then deal with problems if needed. Others felt that there are issues which can be expected and the locality ought to consider whether and how to regulate to best manage those. Noted issues of concern are noise, extra cars parked, and partying all night. This could change or at least impact neighborhoods. Constant turnover off housing units can change the character of a neighborhood. There are also known concerns about impact on housing availability and affordability.

There are some issues, such as the building code, which are statewide but others need to be left to the local governments to determine whether and how to address them. The proposed legislation allows communities to opt-in in order to collect local lodging taxes on short-term rentals. Need to have some ability to deal with the difference between an investor-owned property which is constantly on the short-term rental market or is simply a homeowner renting out a room. There will need to be a registration mechanism of some sort and a checklist for what is needed depending on the degree this is a commercial use or simply an accessory use to a primary residence. If there is tracking of these, it would provide better data for communities to make better informed decisions about the need and degree to regulate.

It was generally agreed that the building code issues need to be more nuanced, both for short-term rentals and for traditional lodging. It seems that a single family house which primarily serves as someone's residence but for part of the year is on the short-term rental market should just be treated as a single family residence. Once it becomes more constant or is investor-owned and always on the short-term rental market, it might be treated more strictly by the code and similarly to a small inn or B&B, but still doesn't necessitate the full compliance that a larger hotel might have. If it is an exceptionally large, say 6 or 8 bedroom house that is being used primarily for short-term rentals then it probably should be treated by the code similarly to a hotel.

The proposed legislation appears to be primarily a revenue mechanism which requires a registration. There are requirements for applying inspections and the building and other codes.

It was determined that the initial effort will be to develop a letter to try to inform the legislation. We desire a middle ground that respects the issues with the traditional lodging industry but is a reasoned approach to not over-regulate. Until we have final legislation, it is probably premature to try to educate the municipalities on this topic. Decisions about the need to and degree of regulations should be left to individual municipalities.

For the next meeting, all Committee members are asked to carefully review the legislation so we are better informed about what is in it. Understand what the local options are. It may be necessary for the legislature to intercede and adjust the building code. The issue of requiring fire suppression systems is an important point since much of our region does not have municipal water supplies and thus systems would be even more expensive since they would be chemical rather than water. There are both Senate and House bills that were filed. We will lay out what the bills contain and what they may be missing. But an important up front issue is to determine what are our policy objectives and identify the planning concerns. Then we can dig into the legislation.

#### **IV. Next Committee Meeting Date, Time & Topic**

The next meeting will be on Wednesday, October 4<sup>th</sup> at 4 p.m. The Committee will continue to focus on Short-Term Housing Rental legislation.

#### **V. Adjournment**

Upon a motion by Chris Rembold, which was seconded by Kyle Hanlon, the meeting was adjourned at 5:25 p.m.

#### **Material Sent or Provided to the Committee**

- Agenda for 8/23/2017 Meeting
- Draft minutes for July 19, 2017 Meeting

- Lenox Planning Board, Short-Term Rental Subcommittee, High Level Overview of Pending Mass Legislation
- H.3454 An Act Regulating and Insuring Short Term Rentals
- S.1553 An Act Relative to Regulation and Taxation of Transient Accommodations in the Commonwealth
- Overview of the Airbnb Community in Lenox, Massachusetts
- Overview of the Airbnb Community in Berkshire County, Massachusetts
- Massachusetts Association of Regional Planning Agencies Letter, 7/24/2017
- IRS Code Section 280A(g)
- CBC Article on Toronto Airbnb Rules 6/12/2017
- Memo from MassDPH to Local Boards of Health, Licensing of Online Home Rental Services, 5/16/2014
- Berkshire Public Health Alliance Casual Lodging Annual Application and Permit form
- Email from Randy Jensen, VerifyMyBNB 8/5/2017